

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF &  
APPENDIX**





74-1847

To Be Argued By  
JOSEPH I. STONE

UNITED STATES COURT OF APPEALS

For The Second Circuit

UNITED STATES OF AMERICA

-v-

DEMETRIOS PAPADAKIS,

Defendant-Appellant.

APPELLANT'S BRIEF

AND  
Appendix

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Foley Square, New York 10007



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ISSUES PRESENTED

POINT ONE

SEVERANCE SHOULD HAVE BEEN GRANTED UNDER F.R.C.P. RULE 8

POINT TWO

SEVERANCE SHOULD HAVE BEEN GRANTED UNDER F.R.C.P. RULE 14



### PRELIMINARY STATEMENT

The defendant-appellant, Demetrios Papadakis, appeals from a judgment of the United States District Court for the Southern District of New York convicting him before trial, with a jury, before Honorable Inzer B. Wyatt of the crime of possession-transportation-receipt of narcotic drugs in violation of Title 21 U.S.C. Section 173, 174.

The defendant-appellant was originally indicted through co-defendants,, Joseph Novoa, Peter Daly, Frank Ramos, Joaquin Nieves, and Elissa Possas. Daly and Novoa were police officers of the S. I. U. Ramos was severed prior to trial and became a government witness. Possas was never apprehended or brought to trial in this case. Nieves was originally indicted on two counts and was acquitted on one count by the jury and one count was dismissed by the Court pursuant to Rule 29. The defendant-appellant, Papadakis, had the conspiracy count dismissed by the judge pursuant to Rule 29, was acquitted on one substantive count and was convicted on one count which forms the basis for this appeal.

The appellant was sentenced on June 14, 1974, to a term of five years imprisonment to run concurrently with two other Federal sentences.that the appellant is now serving. The undersigned was the attorney for the appellant pursuant to an assignment by Judge Wyatt under the Criminal Justice Act and this Court continued this assignment pursuant to a Court Order dated July 9, 1974. The def-



## PRELIMINARY STATEMENT

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The defendant-appellant was originally indicted through ~~a~~-defendants,, Joseph Novoa, Peter Daly, Frank Ramos, Joaquin Nieves, and Elissa Possas. Daly and Novoa were police officers of the S. I. U. Ramos was severed prior to trial and became a government witness. Possas was never apprehended or brought to trial in this case. Nieves was originally indicted on two counts and was acquitted on one count by the jury and one count was dismissed by the Court pursuant to Rule 29. The defendant-appellant, Papadakis, had the conspiracy count dismissed by the judge pursuant to Rule 29, was acquitted on one substantive count and was convicted on one count which forms the basis for this appeal.

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fruits of which were admitted into testimony. There was no testimony or claim by the government that there was any connection or relationship amongst these three alleged purchases.

The five kilos of narcotics were originally stolen by co-defendant Joseph Novoa and his two partners, Peter Daly and Carl Aguiluz, all members of an elite police unit, S. I. U. (Special Investigative Unit). The theft was the outcome of an admittedly illegal arrest of one Gonzalez and others of this arrest involved abduction across state lines, "flaking" or framing the suspects, making an illegal search and finding 105 kilos of narcotics, from which cache, the five kilos were taken.

This large cache of drugs, apparently was the one widely publicised as missing from the custody of the police property clerk (R 1073).

Carl Aguiluz testified that he, Novoa and Daly agreed to sell these five kilos of narcotics. To do so, Aguiluz gave the drugs to Boutureira, his brother-in-law. The three officers split the profits (R. 18, 27, 32, 221). The officers had no dealings with appellant (R. 719).

The total direct testimony of both Ramos and Boutureira consumed only some thirty or forty pages of a record of almost 1800 pages. The bulk of the remaining testimony was given by officers of the S. I. U. When Special Prosecutor, Mr. Nadjeri, broke the "French Connection" case, many of the incriminated



officers became cooperative government witnesses. Herein officers Aguiluz, Seeley, Lamantina, Jaffe, Yurchak, Sottile and Stefano testified to a pattern of shake-downs and robbery (R. 404-406), perjury (R. 761), illegal wiretap (R 505), abduction (R. 468), frame-up of suspect (R. 464), false warrant of arrest (R. 484) and many activities of obstructing justice and dereliction of duty (R. 817-819, 823, 823, 830, 867, 868, 470, 488, 492, 517-519, 686).

The only testimony possibly relevant to the appellant from the officers was the confirmation by Aguiluz that he gave the five kilos of narcotics to Boutureira to sell. For all the rest of this testimony, the Court specifically directed that the jury consider it only as against Joseph Novoa. In fact, counsel for appellant was not permitted to cross-examine because appellant had no standing, (R. 911), and correctly so. This testimony was admitted under those portions of Count I having no relevance to this appellant.

Joseph Novoa took the stand and testified essentially that he was framed by perjurious witnesses and that he was not guilty of any wrong doing.

#### POINT ONE

SEVERANCE SHOULD HAVE BEEN GRANTED UNDER F.R.C.P. RULE 8

The indictment, on its face, called for a severance as a

matter of law. Counts 4 through 10 involve a conspiracy and a series of sales of five (5) kilos of heroin and cocaine. This joinder is presumptively proper. Count I, however, includes not only the substance of Count 4, as related to this appellant, but also a series of wholly unrelated and extremely serious crimes involving only the defendant, Joseph Novoa. Specifically, the Court's attention is directed to specifications 1,2,4, and 5 and overt acts 1,2,3,7 and 8.

Count 1 is thus partly unrelated to the rest of the indictment and certainly as to this appellant and is purely redundant in view of Count 4. There is persuasive case law that the very fact of including wholly unrelated charges indicated that prejudice is to be assumed without further inquiry (U.S. v Roselli, 432 F. 2d 879, 901; Baker v U.S., 401 F. 2d 974). The "Plain error" doctrine of FRCP, Rule 52 has been invoked in such misjoinder (U.S. v Roselli, supra; U. S. v Granello, 365 F. 2d 990).

For joinder, the facts for each offense so joined must form a series or other logically connected and related pattern (U.S. v Gentile, 495 F. 2d 626; King v U.S., 355 F. 2d 700; Haggard v U.S., 369 F. 2d 968; U.S. v Bova, 493 F. 2d 33). While conspiracy may be the bridge to connect apparently unrelated substantive offenses, such offenses must be within the scope of the conspiracy



(U. S. v Gentile, supra, p. 632; Gordon v U. S., 438 F. 2d 852; James v U. S., 416 F. 2d 467).

Were the indictment restricted to Counts 4 through ), there would be no Rule 8 argument. But Count 1 is so totally unrelated, it should not have been joined (Ingran v U. S., 27 F. 2d 567, 569). The fact that there is a common defendant is not controlling where the events obviously require different proofs. For, it cannot be foretold whether such different evidence will be prejudicial (U. S. v Spector, 326 F. 2d 345; see Mc Elroy v U. S. , 164 U. S. 76, 81).

It is respectfully submitted that inclusion in an indictment of two conspiracy counts, one related to the substantive counts and one unrelated cannot be used as a device to avoid the teaching of such cases as Chubert v U. S., 414 F. 2d 1018. Severance should have been granted.

The problem of severance always involves a balancing of the needs of government, i. e. efficiency, cost, time and personnel limitations, and the constitutional rights of a defendant. A salutary, common-sense standard is taught in U. S. v Martinez, 479 F. 2d 824. The government benefit should be explicit from the face of the indictment or from other proper Government representation. Failing such presumptive benefits to the Government a defendant's rights under F.R.C.P. Rule 8(b) should prevail.

## POINT II

### SEVERANCE SHOULD HAVE BEEN GRANTED UNDER RULE 14

Appellant's trial is a most cogent example of the necessity for and the wisdom of Rule 8, F.R.C.P. The indictment, on its face, as argued in Point I (supra), supported the inference of an extremely high probability of prejudice against the appellant. The actual trial testimony presented the jury with an overwhelming mass of damning evidence wholly irrelevant to this appellant. Irrelevant, in that such testimony involved either crimes committed by co-defendant, Novoa, at other times, at other places and with other persons having no connection with narcotics or with the narcotics allegedly bought by appellant or were hearsay statements made inadmissible as against appellant when the conspiracy count against him was dismissed.

Appellant uses the phrase "overwhelming mass of damning evidence" literally. The number of pages of record under Count 1 as to co-defendant, Novoa, plus these made inapplicable to appellant by the dismissal of the Count 4 conspiracy, literally outnumber the pages relevant to appellant by at least fifteen or twenty to one. As for "damning", the government's own summation is eloquent. The testimony of witnesses and records "establish that Joseph Novoa sold his badge, sold his honor, sold his integrity and he sold out the public trust in him . . . Joseph Novoa violated his oath, time after time after time. He made a dis-



gusting mockery out of the system of justice . . . that we all rely on to enforce our laws"(R. 1542).

The Court did give timely, legally correct limiting instructions to the jury. It did so many, many times during the testimony against co-defendants Novoa and Nieves. The language of *Sims v U. S.* , 405 F. 2d 1381 at 1383 is very apt.

"This case is a classic example of when prejudice cannot be erased and severance is called for."

*Sims* goes on to quote J. Friendly in *U. S. v Bozza*, 365 F. 2d at 217:

". . . (T)here is a point where credulity as to the efficacy of such instructions with respect to a confession implicating co-defendants is overstrained . . ." (*Bruton v U. S.*, 391 U. S. 123; *Barton v U. S.* , 263 F. 2d 894; *Kramer v U.S.*, 317 F. 2d 114).

Appellant submits that the operative concept of prejudicial "spill-over" is equally valid whether the testimony comes from a co-defendant's confession or from potential co-defendants who become government witnesses or from a joinder which ab initio or during trial is shown to be improper.

"A co-defendant in a conspiracy trial occupies an uneasy seat. There generally will be evidence of

wrongdoing by somebody. It is difficult for the individual to make his case stand on its own merits in the minds of jurors who are ready to believe that birds of a feather flock together."

(Schaffer v U. S., 362 U. S. 511, 516).

The dissent in Schaffer, mindful of the possibility of the creation of a "subtle bond" between the co-defendants, would always hold as misjoinder whenever the conspiracy count fails for lack of evidence. Despite the eloquent words of Judge Learned Hand in Nash v U. S., 54 F. 2d 1006, 1007, that a cautionary instruction is a "recommendation to the jury of a mental gymnastic which is beyond, not only their powers, but anybody else". Most of the cases do hold with the rule that proper instructions will reasonably cure prejudice. Pragmatically such rule may be salutary and necessary. The implication is there, however, that there are cases where prejudice is so clear as to mandate the exercise of the court's discretion to order a severance. Appellant respectfully urges that this trial presents such a situation. The prejudice recognized in Kotteakos v U. S., 328 U. S. 750, which resulted from a large number of defendants and conspiracies is qualitatively similar to the prejudice resulting herein from the recitals of the large list of unrelated crimes and their attendant gory details (U. S. v Donaway, 447 F. 2d 940).



Though Counts 4 through 10 were properly joined on the face of the indictment, the dismissal of the conspiracy as against appellant left many hearsay statements, most of which were not specifically included in limiting instructions. As examples, there were such hearsay conversations arranging for the distribution of the five kilos of narcotics (R. 10, 13, 15, 24, 80, 240, 492, 493, 495, 496); as to splitting of the proceeds (R. 32); as to self-serving declarations (R. 49).

Appellant submits that he has sustained his burden of showing actual prejudice (U. S. v Kahaner, 203 F. Supp. 78). He is not seeking a separate trial merely because it might give him a better chance of acquittal (Tillman v U. S., 406 F. 2d 930).

Possibly the strongest argument which appellant can offer that the prejudice herein was not curable by limiting instructions, is in the government's summation. Throughout its summation, the government kept referring to the three co-defendants as linked and to their statements and conversations, whether inapplicable hearsay or not (R. 1485, 1486, 1491, 1493-1499, 1503, 1510, 1515, 1516, 1520, 1541). The government view, despite the limiting instructions, is well summed up when it said that all three shared in the proceeds, let them share in the guilt (R. 1542).

Were the appellant arguing prejudicial conduct in the summation, he would have made it Point III and gone into detail.

On the contrary, the very fact of the utmost good faith and exemplary professional conduct during this trial by the government proves, most emphatically, the utter impossibility of the limiting instructions herein being effective in any way in the minds of the jury. It seems strong support for appellant's position that the jury acquitted him on one substantive count and not the second, although the quality and credibility of the testimony was almost identical for both.

The attention of this Court is respectfully directed to the words of Judge Storey,

"Severance . . . is a matter of sound discretion, to be exercised by the Court with all due regard and tenderness to prisoners, according to the known humanity of our criminal jurisprudence."

(U. S. v Marchant, 12 Wheat. 480, 483; see Brown v U. S., 375 F. 2d 310, Cert. Den., 383 U. S. 915).

WHEREFORE, THIS COURT, IN THE INTERESTS OF JUSTICE, SHOULD REVERSE THE JUDGMENT OF CONVICTION, DISMISS THE INDICTMENT OR IN THE ALTERNATIVE, ORDER A NEW TRIAL.

RESPECTFULLY SUBMITTED,

JOSEPH I. STONE, ESQ.  
Attorney for the Defendant



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### ORAL MOTIONS, APPLICATIONS AND RULINGS OF THE COURT

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### ORAL MOTIONS, APPLICATIONS AND RULINGS OF THE COURT

57a-70a



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

x 74 CRIM. 229

UNITED STATES OF AMERICA :

-v- :

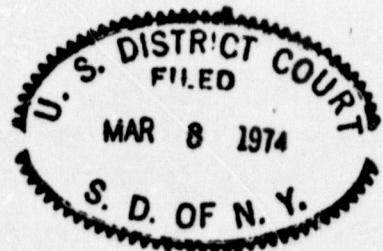
JOSEPH NOVOA, PETER DALY, :  
FRANK RAMOS, DEMETRIOS PAPADAKIS, :  
a/k/a "Jimmy Pappas", a/k/a :  
"Jimmy the Greek", JOAQUIN NIEVES, :  
and ELISSA POSSAS, :

Defendants. :

INDICTMENT

74 Cr.

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The Grand Jury charges:



## INTRODUCTION

1. At all times relevant herein the defendants PETER DALY, and JOSEPH NOVOA, were members of the New York City Police Department, assigned to the Narcotics Bureau, Special Investigation Unit (SIU).

2. The Bureau of Narcotics and Dangerous Drugs, known since July 1, 1973, as the Drug Enforcement Administration, at all times relevant herein was an agency of the United States Department of Justice charged with investigating violations of the criminal laws of the United States relating to narcotics.

3. The Bureau of Customs, at all times relevant herein, was an agency of the United States Treasury Department charged with investigating violations of the criminal laws of the United States relating to narcotics, passport and visa violations.

4. The illegal importation into the United States of narcotic drugs and the receipt, concealment, purchase and sale, and the facilitation of the transportation, concealment, purchase and sale of narcotic drugs were, at all times relevant herein, crimes under the laws of the United States.



COUNT ONE

The Grand Jury charges:

1. From in or about April 14, 1970 up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere JOSEPH NOVOA and PETER DALY, the defendants, unlawfully, willfully and knowingly did combine, conspire, confederate and agree together and with each other and with others to the Grand Jury known and unknown to defraud the United States and its departments and agencies in connection with the performance of their lawful governmental functions by obstructing and hindering the United States Department of Justice, the Bureau of Narcotics and Dangerous Drugs, and the Bureau of Customs in investigating and prosecuting violations of the narcotics laws of the United States and to violate Sections 173 and 174 of Title 21, United States Code, and Sections 3 and 1510 of Title 18, United States Code.

2. It was a part of said conspiracy that the defendants and their co-conspirators would and did agree to arrest Emilio Diaz Gonzales, a/k/a "Alfred Picardo", Elena Risso a/k/a "Yolando Sarmiento", Jose Luis Mulas and Jorge Rodrigues Araya (hereinafter "the offenders") for unlawful possession of narcotics, and in connection with said arrests, to seize approximately \$1,200 in United States currency, which currency was evidence of violations of the narcotics laws of the United States, and to divide such currency among the defendants and others without reporting said seizure to



the New York City Police Department or to Federal law enforcement authorities and to retain possession of approximately five (5) kilograms of heroin and cocaine seized as part of a much larger quantity of contraband narcotics seized from Apartment 4-F, 210 West 19th Street, New York, New York, where said narcotics were being secreted, thereby depriving the United States Government of evidence of violations of the narcotics laws of the United States.

3. It was further a part of said conspiracy that the defendants and their co-conspirators unlawfully, wilfully and knowingly would facilitate the transportation, concealment and sale of quantities of narcotic drugs, after the said narcotic drugs had been imported and brought into the United States, knowing the same to have been imported and brought into the United States contrary to law.

6. It was further a part of said conspiracy that the defendants and their co-conspirators would conceal the existence of the conspiracy and would take steps designed to prevent disclosure of their activities.

#### OVERT ACTS

In furtherance of said conspiracy and in order to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

1. On or about April 14, 1970 the defendants PETER DALY and JOSEPH NOVOA, and others, followed the offenders from New York. New York to Fort Lee, New Jersey.

2. On or about April 14, 1970 the defendants PETER DALY and JOSEPH NOVOA and others, unlawfully caused the offenders to return from Fort Lee, New Jersey to New York, New York.

3. On or about April 14, 1970, the defendants PETER DALY and JOSEPH NOVOA, and others took approximately twelve hundred dollars (\$1200.00) from the offenders while in the Sixth Precinct Station House, New York, New York.

4. On or about April 15, 1970, the defendants PETER DALY and JOSEPH NOVOA and others conducted a search of Apartment 4-F, 210 West 19th Street.

5. On or about April 15, 1970, the defendants PETER DALY and JOSEPH NOVOA and others seized a large quantity of narcotic drugs in excess of one-hundred kilograms, the exact kind and nature to the Grand Jury unknown,



from Apartment 4-F, 210 West 19th Street, Manhattan.

6. On or about April 15, 1970, the defendant PETER DALY placed a brown valise containing approximately five (5) kilograms of heroin and cocaine in a motor vehicle in the vicinity of 210 West 19th Street, New York, New York.

7. In and around late April or May 1970, the defendant PETER DALY had conversations with members of the SIU in which he stated he had obtained \$5,000 from the apartment of the aforesaid offender, "Yolando Sarmiento", located in Brooklyn, New York.

8. In and around late April, May and June 1970, the defendants PETER DALY and JOSEPH NOVOA and others had conversations among themselves and with members of the SIU in which they discussed accepting \$150,000 to corruptly dispose of the criminal charges pending against the offenders.

9. In and around May and June 1970, the defendants PETER DALY and JOSEPH NOVOA and others had conversations in which they agreed among themselves to sell and transfer the aforementioned five kilograms of heroin and cocaine.

10. In or about May, and June 1970, the defendant FRANK RAMOS and others met with the defendants DEMETRIOS PAPADAKIS, a/k/a "Jimmy Pappas", a/k/a "Jimmy the Greek", and ELISSA POSSAS.

11. In and around May and June, 1970 the defendant FRANK RAMOS met with the defendant JOAQUIN NIEVES.

12. During the summer of 1970, the defendants PETER DALY and JOSEPH NOVOA met with others and divided among themselves approximately \$54,000, from the transfer and sale

of the approximately five (5) kilograms of heroin and cocaine.

(Title 18, United States Code, Section 371.)

COUNT TWO

The Grand Jury further charges:

In or about April, May and June, 1970, in the Southern District of New York and elsewhere, PETER DALY and JOSEPH NOVOA, the defendants, knowing that an offense against the United States had been committed, to wit, a violation of the narcotics laws of the United States, unlawfully, wilfully and knowingly did relieve, comfort and assist the offenders named in Count One and others in order to hinder and prevent said offenders' trial and punishment, in that among other things the defendants deliberately withheld and failed to report and turn in to any authorized law enforcement agency, and instead retained and divided among themselves approximately \$1,200 in United States currency and approximately five (5) kilograms of heroin and cocaine which currency and heroin and cocaine constituted evidence of violations of the narcotics laws of the United States.

(Title 21, United States Code, Sections 173 and 174;  
Title 18, United States Code, Section 3.)

COUNT THREE

The Grand Jury further charges:

In or about April, May and June, 1970, in the Southern District of New York, PETER DALY and JOSEPH NOVOA, the defendants, and others to the Grand Jury known and unknown,



unlawfully, wilfully and knowingly did endeavor by means of bribery, misrepresentation, intimidation, and force and threats thereof to obstruct, delay and prevent the communication of information relating to violations of Sections 173 and 174 of Title 21, United States Code, to criminal investigators in that, among other things, the defendants deliberately withheld and failed to turn in to any authorized law enforcement agency, and instead retained and divided among themselves approximately \$1,200 in United States currency and sold approximately five (5) kilograms of heroin and cocaine which currency and heroin and cocaine constituted evidence of violations of the narcotics laws of the United States.

(Title 18, United States Code, Sections 1510 and 2.)

COUNT FOUR

The Grand Jury further charges:

1. In and about April, 1970, and continuously thereafter up to and including the date of the filing of this indictment in the Southern District of New York and elsewhere, PETER DALY, JOSEPH NOVOA, FRANK RAMOS, DEMETRIOS PAPADAKIS, a/k/a "Jimmy Pappas", a/k/a "Jimmy the Greek", JOAQUIN NIEVES, and ELISSA POSSAS, the defendants, and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to violate Sections 173 and 174 of Title 21, United States Code.

2. It was part of said conspiracy that the defendants and others to the Grand Jury known and unknown,

unlawfully, wilfully and knowingly would receive, conceal, buy, sell and facilitate the transportation, concealment and sale of a quantity of narcotic drugs, the exact amount and nature thereof being to the Grand Jury unknown, after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law in violation of Sections 173 and 174 of Title 21, United States Code.

3. Among the means whereby the defendants accomplished the objectives of this conspiracy were the following:

(a) The defendants PETER DALY and JOSEPH NOVOA and others, under the guise of their official capacity as police officers, seized large quantities of heroin and cocaine and illegally retained in their possession approximately five (5) kilograms of heroin and cocaine.

(b) The defendants PETER DALY and JOSEPH NOVA and others concealed and then transferred, and caused to be transferred, the five (5) kilograms of heroin and cocaine to an intermediary.

(c) The intermediary with the assistance of the defendant FRANK RAMOS sold the heroin and cocaine to the defendants DEMETRIOS PAPADAKIS, a/k/a "Jimmy Pappas", a/k/a "Jimmy the Greek", joaquin nieves, ELISSA POSSAS and others.



### OVERT ACTS

In furtherance of said conspiracy and in order to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere

1. On or about April 15, 1970, the defendants PETER DALY and JOSEPH NOVOA and others seized over 100 kilograms of heroin and cocaine, the exact kind and nature to the Grand Jury unknown, from Apartment 4-F, 210 West 19th Street, New York, New York.

2. On or about April 15, 1970, the defendant PETER DALY, in the vicinity of 210 West 19th Street, New York, New York, placed a brown valise containing approximately five (5) kilograms of heroin and cocaine in a motor vehicle.

3. In or about May and June 1970, the defendants PETER DALY and JOSEPH NOVOA and others had conversations in which they agreed among themselves and with others to sell and transfer the above mentioned narcotic drugs.

4. In or about May and June, 1970, the defendants FRANK RAMOS, and others, met with the defendants DEMETRIOS PAPADAKIS, a/k/a "Jimmy Pappas", a/k/a "Jimmy the Greek", and ELISSA POSSAS.

5. In or about July, 1970 the defendant FRANK RAMOS and others met with the defendant JOAQUIN NIEVES.

6. During the summer of 1970, the defendants PETER DALY and JOSEPH NOVOA met in New York, New York with others to the Grand Jury known and unknown and divided among themselves a total of approximately \$54,000, as the illegal proceeds from the sale of the above-mentioned narcotics.

(Title 21, United States Code, Sections 173 and 174).



COUNT FIVE

The Grand Jury further charges:

On or about April 15, 1970 in the Southern District of New York, PETER DALY and JOSEPH NOVOA, the defendants, unlawfully, wilfully and knowingly did receive, conceal, buy and sell and facilitate the transportation, concealment, purchase and sale of narcotic drugs, to wit, approximately five kilograms of heroin hydrochloride and cocaine hydrochloride, after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law.

(Title 21, United States Code, Sections 173 and 174;

Title 18, United States Code, Section 2.)

COUNT SIX

The Grand Jury further charges:

In or about May and June 1970, in the Southern District of New York PETER DALEY, JOSEPH NOVOA FRANK RAMOS, DEMETRIOS PAPADAKIS, a/k/a "Jimmy Pappas", a/k/a "Jimmy the Greek", and ELISSA POSSAS, the defendants, unlawfully, wilfully and knowingly did receive, conceal, buy and sell, and facilitate the transportation, concealment, purchase and sale of narcotic drugs, to wit, approximately one kilogram of heroin hydrochloride after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law.

(Title 21, United States Code, Sections 173 and 174;

Title 18, United States Code, Section 2.)

COUNT SEVEN

The Grand Jury further charges:

In or about May and June, 1970, in the Southern District of New York, PETER DALY, JOSEPH NOVOA, FRANK RAMOS, DEMETRIOS PAPADAKIS, a/k/a "Jimmy Pappas", a/k/a "Jimmy the Greek", and ELISSA POSSAS, the defendants, unlawfully, wilfully and knowingly did receive, conceal, buy and sell and facilitate the transportation, concealment, purchase and sale of narcotic drugs, to wit, approximately one kilogram of heroin hydrochloride after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law.

(Title 21, United States Code, Sections 173 and 174; Title 18, United States Code, Section 2.)



COUNT EIGHT

The Grand Jury further charges:

In or about May and June, 1970, in the Southern District of New York, PETER DALY, JOSEPH NOVOA, FRANK RAMOS and JOAQUIN NIEVES, the defendants, unlawfully, wilfully and knowingly did receive, conceal, buy and sell and facilitate the transportation, concealment, purchase and sale of narcotic drugs, to wit, approximately one kilogram of heroin hydrochloride after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law.

(Title 21, United States Code, Sections 173 and 174; Title 18, United States Code, Section 2.)

COUNT NINE

The Grand Jury further charges:

In or about May and June, 1970, in the Southern District of New York, PETER DALY, JOSEPH NOVOA, and FRANK RAMOS, the defendants, unlawfully, wilfully and knowingly did receive, conceal, buy and sell and facilitate the transportation, concealment, purchase and sale of narcotic drugs, to wit, approximately one kilogram of cocaine hydrochloride after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law.

(Title 21, United States Code, Sections 173 and 174; Title 18, United States Code, Sections 2.)



COUNT TEN

The Grand Jury further charges:

In or about May and June, 1970, in the Southern District of New York, PETER DALY, JOSEPH NOVOA, and FRANK RAMOS, the defendants, unlawfully, wilfully and knowingly did receive, conceal, buy and sell and facilitate the transportation, concealment, purchase and sale of narcotic drugs, to wit, approximately one kilogram of cocaine hydrochloride after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law.

(Title 21, United States Code, Sections 173 and 174;  
Title 18, United States Code, Sections 2.)

A TRUE COPY  
RAYMOND F. BURCHARDT, Clerk

By Paul J. Curran  
Deputy Clerk

John H. Hyslop  
FOREMAN

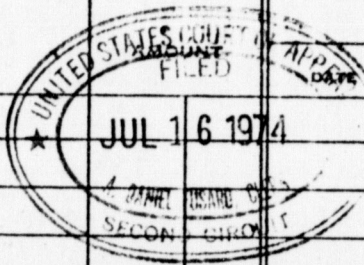
Paul J. Curran  
PAUL J. CURRAN  
United States Attorney

| TITLE OF CASE                                      | ATTORNEY'S                |
|--|---------------------------|
| THE UNITED STATES                                  | For U. S.:                |
| vs.  | Rudolph W. Giuliani, A IS |
| JOSEPH, NOVOA- all cts.                            | 264-6139                  |
| PETER DALY- all cts.                               |                           |
| FRANK RAMOS-4, 6-10                                |                           |
| DEMETRIOS PAPADAKIS-4,6,7,a/k/a Jimmy Pappas,a/k/a |                           |
| "Jimmy the Greek"                                  | For Defendant:            |
| JOAQUIN NIEVES-4,8.                                |                           |
| ELISSA POSSAS-4,6,7.                               |                           |

## ABSTRACT OF COSTS

## CASH RECEIVED AND DISBURSED

| (07)   | NAME         | RECEIVED | DISBURSED |
|--|--------------|----------|-----------|
| Fine,  |              |          |           |
| Clerk, 83-5-4                                |              |          |           |
| Marshal,                                     |              |          |           |
| Attorney,                                    |              |          |           |
| X Commissioner's Court, 18:371,21173,4       |              |          |           |
| Witnesses viol. Fed. Narcotic Laws.(Cts.1&4) |              |          |           |
| 18:3,21173,4 Accessory to the fact.(Ct.2)    |              |          |           |
| 18:1510 Obstruction of crim. invest.(Ct.3)   |              |          |           |
| 21:173,4 Unlaw. sale, receive, & conceal.    |              |          |           |
| of Heroin & Cocaine.                         |              |          |           |
|  | (Ten Counts) |          |           |



| DATE    | PROCEEDINGS  |
|---------|--|
| 3-8-74  | Filed indictment. B/Ws' ordered. Pollack, J. B/Ws issued.  |
| 3-12-74 | Deft. Novoa(present) Matter adj'd to 3-25-74 at Pollack, J.<br>10 AM. Bail set at \$10,000. P.R.B. unsecured.  |
| 3-12-74 | Filed copy of P.R.B. bond unsecured in the amt. (\$10,000.) acknowledged by Clerk on 3/12/74.  |
| 3-18-74 | J. Novoa(atty. present) Pleads not guilty. Bail fixed at \$25,000. P.R. secured by \$2,500. cash.<br>Defts. Possas( No appearance by defts. Court directs entry of not guilty.<br>Daly( Case assigned to Judge Wyatt for all purposes. Motion<br>Papadakis and Ramos.( ret. in 10 days. Notley, J. |



| DATE    | PROCEEDINGS   | CLERK'S FEES |           |
|---------|---|--------------|-----------|
|         |   | PLAINTIFF    | DEFENDANT |
| 3-18-74 | JOSEPH NOVOA-Filed notice of appearance of James L.R. Costello<br>170 B'way N.Y.C. 10038 BA 7-4233  |              |           |
| 3-21-74 | FRANK RAMOS-Filed notice of appearance of Rubin, Gold & Geller<br>299 B'way N.Y.C. 233-3330   |              |           |
| 3-22-74 | JOAQUIN NIEVES-Filed remand ---March 12, 1974.Deft. released from<br>the custody of the U.S. Marshal. Bond posted as directed by Court.   |              |           |
| 3-29-74 | Pre-trial conference held. Trial May 13, 1974. Motion by April 12,<br>1974---Wyatt, J.  |              |           |
| 4-1-74  | JOAQUIN NIEVES-(atty Robert Schwartz present) Court enters plea of<br>not.guilty.---Wyatt, J.   |              |           |
| 4-1-74  | D. METRIOS PAPADAKIS= Filed Affdvt for Writ of Habeas Corpus<br>v. a Joseph Jaffe US Atty. Writ issued - Ret 4-3-74.  |              |           |
| 4-3-74  | JOAQUIN NIEVES= Filed notice of appearance of ROBERT B. SCHWARTZ<br>c/o A.J. Krieger, 401 Bway, NYC Tel#9255937.  |              |           |
| 4-5-74  | D. METRIOS PAPADAKIS= Deft present. produced in court on Writ.<br>Joseph I. Stone assigned as Atty. C.J.A. Writ. adj. to 5-13-74,<br>Deft pleads "NOT GUILTY" --- WYATT, J.       |              |           |
| 4-8-74  | D. METRIOS PAPADAKIS= Filed Deft's CJA Form #23 -- Financial Affidavit.<br>" " " " = Filed CJA 20, Copy #5, appointing Joseph I.<br>Stone, 277 Broadway, NYC 10007 Tel#RE 2-2270. |              |           |
| 4-17-74 | JOAQUIN NIEVES= Filed Deft's Notice of Motion and Affidavits<br>requesting the dismissal of the indictment.   |              |           |
| 4-18-74 | JOSEPH NOVOA= Filed Deft's Demand for a Bill of Particulars.  |              |           |
| 4-22-74 | JOSEPH NOVOA - Filed Deft's Memorandum of Law.  |              |           |
| 4-22-74 | JOSEPH NOVOA - Filed Deft's Notice of Motion to consolidate support papers. ret. 4/26   |              |           |

| DATE     | PROCEEDINGS  |
|----------|--|
| 4-24-74  | JOAQUIN NIEVES - Hearing held as to Deft. Nieves atty present with interpreter Norma Seltzer. Wyatt J.   |
| 4-25-74  | JOAQUIN NIEVES - Filed Memo. End. on motion dated 4/17/74. Motion denied.<br>- So Ordered Wyatt J. (mailed notice)   |
| 4-26-74  | JOSEPH NOVOA - Filed Pltiff's Affidavit <sup>/of</sup> Michael B. Mukasey in response to Deft various pre-trial motions, such as Bill of Particulars, pre-trial discovery, ect.  |
| 4-26-74  | JOSEPH NOVOA - Filed Pltiff's Memorandum of Law in opposition to Deft's motions for Bill of Particulars, Discovery & Inspection, ect.  |
| 4-29-74  | JOSEPH NOVOA - Filed Memo. End. on motion dated 4/22/74. Motion in all respects denied. Wyatt J. (mailed notice)   |
| May 6-74 | JOAQUIN NIEVES, - Filed Notice of Motion. Re: Dismiss Indictment. ret. Sine Die.   |
| May 6-74 | JOAQUIN NIEVES & FRANK RAMOS - Filed the following papers rec'd from Magistrate Raby (Mag. #74-328) Docket Sheets Entry, Warrant issued 3-8-74, Disposition Sheet, Notice of Appearance, (2) Appearance Bond (F. Ramos) (1) \$10,000.00 P.B. without security, co-signed by wife on 3/13/74, Final Commitment (J. Nieves) (1). |
| 5-10-74  | Filed Affidavit by Lawrence S. Feld U.S. Atty. in opposition to motions served by deft. Joaquin Nieves.  |
| 5-10-74  | JOAQUIN NIEVES - Filed Memo. End. on motion dated 5/6/74. Motion is denied in all respects except that the 1955 conviction will be excluded if deft. testifies. Wyatt J. (mailed notice)   |
| 5-13-74  | Filed Pltiffs. Affidavit that writ of habeas corpus be issued to Nicholas Lamattina at Federal Prison Camp, Eglin Air Force Base, writ Issued Ret. 5/14/74   |
| 5-13-74  | Filed Pltiffs Affidavit that writ of habeas corpus be issued to Nicholas De Stefano at Federal Prison Camp, Eglin Air Force Base, Writ Issued Ret. 5/14/74.  |
| 5-13-74  | JOSEPH NOVA - Filed Order that the will show that counsel did not appear for motion & deft. was in no way at fault. Wyatt J. (mailed notice)   |
| 5-14-74  | Filed Pltiffs, Notice of Motion for an order adjourning the trial until 9/3/74, 5/20/74, etc. & Affidavit in support.  |
| 5-15-74  | JOSEPH NOVOA, ET AL. - Trial begun as to defts. Joseph Novoa, Demetrios Papadakis, & Joaquin Nieves (nte preter- Italian S. Bastianello) (Attys. Present) with a jury. Bail of Deft. Novoa reduced to \$25,000 P.R.B. (no cash).   |
| 5-16-74  | Trial cont'd.  |
| 5-17-74  | Trial cont'd.  |
| 5-20-74  | Trial cont'd.  |
| 5-21-74  | Trial cont'd.  |
| 5-22-74  | Trial cont'd. Gov't. rests - <sup>/NOVA &amp; PAPADAKIS</sup> defts. move to dismiss count 4. Decision Reserved  |
| 5-23-74  | Trial cont'd.  |

Continued on Page #4



| DATE    | PROCEEDINGS  |
|---------|--|
| 5-31-74 | NICHOLAS LAMATTINA - Filed Writ of Habeas Corpus directed to Warden - Federal Prison Camp Eglin Air Force Base, Fla. Writ Satisfied. Cannella J. 5/23/74.  |
| 5-31-74 | NICHOLAS De STEFANO - Filed Writ of Habeas Corpus directed to Warden - Federal Prison Camp Eglin Air Force Base, Fla. Writ Satisfied 5/23/74.  |
| 5-24-74 | Trial cont'd. Defts NOVA & PAPADAKIS rest, Gov't motion to sever Counts 2 & 3 as to deft. NOVA - "GRANTED".<br>Deft's NIEVES and PAPADAKIS motion to DISMISS count 4 - "GRANTED".  |
| 5-28-74 | Trial cont'd. Deft. NIEVES rest. All sides rest. Summations.   |
| 5-29-74 | Trial cont'd. Court charges the jury. Jury deliberating.   |
| 5-30-74 | Jury deliberations cont'd. Partial Verdict. Deft NOVOA, GUILTY on Count #1.<br>Deft. PAPADAKIS, NOT GUILTY on Count #6.<br>Deft. NIEVES, NOT GUILTY on Count #8.,<br>discharged.   |
| 5-31-74 | Jury deliberations cont'd.   |
| 6-3-74  | Jury deliberations cont'd. Deft. PAPADAKIS, GUILTY on Count #7. Sentence June 14, 1974 @ 2:30 PM - Pre-Sentence investigation ordered.<br>Deft. NOVOA, GUILTY on each of Counts #1, 5, 6, 7, 8, 9, & 10. -- Court to fix sentence date on June 5, 1974 @ 10:00 A.M. --- WYATT, J.  |
| 6-5-74  | JOSEPH NOVA- Deft. sentence July 2, 1974 @ 10:00 A.M., Room 102. Deft. continued on present Bail until 5:00 PM today to make Bail in the amount of \$50,000. P.R.B., SIGNED by Deft., Deft's Wife, Deft's Mother & Deft's Brothers, & Deft's Mother In Law. SECURED BY THE DEED OF THE DEFT'S HOUSE. Condition of Bail that the Deft. SIGN in ROOM 345 @ 6:30 PM on TUESDAYS and THURSDAYS of every week --- WYATT, J. |
| 6-5-74  | JOSEPH NOVOA- Filed unsecured P.R.B. in the amount of \$50,000 acknowledged by Clerk.  |
| 6/10/74 | Filed transcript of record of proceeding of May 15, 16, 17, 20 1974  |
| 6/10/74 | Filed transcript of record of proceedings of May 21, 22, 23, 24, 28, 1974  |
| 6/10/74 | Filed transcript of record of proceedings of May 29, 30, 31, 1974 & June 3 1974  |
| 5-31-74 | DEMETRIOS PAPADAKIS-Filed CJA 21 appointing Court Reporters-Wyatt, J. 5-21-74.   |
| 6-14-74 | DEMETRIOS PAPADAKIS-Filed JUDGMENT and COMMITMENT (atty present) Deft. is committed to the Atty Gen'l for imprisonment for a period of FIVE (5) YEARS, to run concurrently with sentences now being served under indictments 71 cr. 614 and 71 cr. 972....Wyatt, J. Issued Commitment 6-17-74.   |
| 6-14-74 | DEMETRIOS PAPADAKIS-Filed notice of appeal from Judgment dated 6-14-74. Mailed copies to deft. at Federal House of Detention & U.S. Atty.  |
| 6-18-74 | DEMETRIOS PAPADAKIS-Filed writ of habeas corpus with Marshal's return-6-14-74 Writ Satisfied---Knapp, J.   |
| 6-20-74 | DEMETRIOS PAPADAKIS-Filed commitment & entered return. Deft. delivered to Warden, Federal detention Headquarters, 427 West Street, N.Y.C. on June 14, 1974.  |

DATE

PROCEEDINGS

Date  
Judgment

7-2-74

JOSEPH NOVOA-Filed JUDGMENT and COMMITMENT (atty present) It is adjudged that the deft is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIVE (5) YEARS on count 1. TEN (10) YEARS on each of counts 4 thru 10, to run concurrently with each other, Sentence imposed on count 1, to run concurrently with sentence imposed on counts 4 thru 10.....Wyatt,J.

7-2-74

JOSEPH NOVOA-Deft. remanded.....Wyatt,J.

7-2-74

JOSEPH NOVOA-Filed deft's. consent to change attorney. So Ordered.....Wyatt,J.

7-2-74

JOSEPH NOVOA-Filed Notice of Appeal from the Judgment of Conviction as entered on July 2, 1974. (Mailed notice to Joseph Novoa, 1738 East 33rd Street, Brooklyn, New York and U S. Attorney.)

A TRUE COPY

RALPH F. BURGHARDT, Clerk

By

Deputy Clerk

E



FOR THE  
SOUTHERN DISTRICT OF NEW YORK

United States of America

v.

No. 74 Cr. 229

DEMETRIOS PAPADKIS,  
a/k/a "Jimmy Pappas", a/k/a  
"Jimmy the Greek."



On this 14th. day of June, 1974 came the attorney for the government and the defendant appeared in person and by Joseph I. Stone, Esq.

IT IS ADJUDGED that the defendant upon his plea of<sup>2</sup> not guilty, and a finding of guilty by a jury, has been convicted of the offense of unlawfully, wilfully and knowingly did receive, conceal, buy and sell and facilitate the transportation, concealment, purchase and sale of narcotic drugs, to wit, heroin hydrochloride.

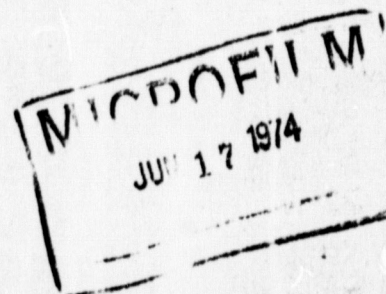
(Title 21, U. S. Code, Sections 173 and 174; Title 18, U. S. Code, Section 2.)

as charged<sup>3</sup> in count 7,  
and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of<sup>4</sup> FIVE (5) YEARS, to run concurrently with sentences now being served under indictments 71 Cr. 614 and 71 Cr. 972.

IT IS ADJUDGED that<sup>5</sup>



IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

*Ernest B. Stewart*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**UNITED STATES OF AMERICA**

**-v-**

**DEMETRIOS PAPADAKIS,**

**Defendant-Appellant.**

**NOTICE OF APPEAL**

**74 Cr. 229**

**Name and address of appellant: Demetrios Papadakis, Federal  
House of Detention, 427 West Street, New York, New York.**

**Name and address of appellant's attorney: Joseph I. Stone,  
277 Broadway, New York, New York, assigned pursuant to order  
of the District Court on April 5, 1974.**

**Offense: Violation of Title 21, U.S.C., Sections 173 and 174.**

**Judgment: Rendered on the 14th day of June, 1974, before  
Hon. J. R. B. Wyatt, U.S.D.J., sentencing the defendant to  
Five (5) years imprisonment. CONCURRENTLY**

**Bail: No bail was requested or set as defendant is incarcerated  
on another matter.**

**The above-named appellant hereby appeals to the  
United States Court of Appeals for the Second Circuit from  
the above-stated judgment.**

**Dated: New York, New York  
June 14, 1974**

**Yours, etc.,**

**JOSEPH I. STONE  
Attorney for defendant  
277 Broadway  
New York, New York 10007**

**TO: PAUL J. CURRAN, ESQ.  
United States Attorney  
Southern District of New York  
United States Courthouse  
Foley Square, New York 10007**

**TO: CLERK OF THE COURT**



1 mcp 8

2 S A L V A T O R E B O U T U R E I R A, resumed,  
3 having been previously sworn, testified  
4 - X \* X X X X X -  
further as follows:

5 DIRECT EXAMINATION CONTINUED

6 BY MR. FEILD:

7 THE CLERK: Mr. Boutureira, you are still  
8 under oath. You may be seated.

9 Q Mr. Boutureira, would you speak up so that  
10 everybody can hear you.

11 Yesterday I believe you testified that you  
12 had agreed on a price with Frank Ramos' concerning these  
13 items; is that correct?

14 What happened after that; what did you do?

15 A Well, I gave him the price of \$12,000 on the  
16 kilo of heroin and \$9500 on the kilo of cocaine. I will  
17 get \$12,000 from the heroin and the 500 left Frankie will  
18 get and I would get \$9000 from the cocaine and Frankie will  
19 get the 500, plus whatever commission we get.

20 So Frankie said he had a buyer for the whole  
21 thing and I told him if he had the money -- because he  
22 wanted me to bring the merchandise over to him and let him  
23 sell it. I told him no, that I needed the money. So I  
24 left. I told that to Carl.

25 THE COURT: This is at the Cafe d Madrid?

1 mkpl 10

Boutuneira-direct

T3

2 MR. COSTELLO: Can we have an identification  
3 as to "they," your Honor?

4 THE COURT: Yes. Did he tell you who the  
5 purchasers were going to be?

6 THE WITNESS: No, your Honor, not yet.

7 MR. COSTELLO: May we also have a time and  
8 hour whenever possible?

9 THE COURT: Yes.

10 MR. COSTELLO: Thank you, your Honor, sir.

11 Q Continue.

12 A So -- well, when he told me that he had the  
13 buyer for the whole thing I went out and I saw Carl and I  
14 told him, so we went in my car -- I went in my car, and  
15 then in the other car went Carl, Joe Novoa and Pete Daly.

16 MR. COSTELLO: The time and date, please?

17 THE COURT: Yes.

18 THE WITNESS: I don't recall the date.

19 MR. COSTELLO: The time?

20 THE WITNESS: I can't recall the time -- it  
21 would be in the afternoon some time -- some time in the  
22 afternoon. I don't know the time.

23 MR. COSTELLO: The month, the year?

24 THE WITNESS: 1970.

25 THE COURT: Well, the year is 1970, we know



2 the wood because this place is in ruins. It was being  
3 fixed to be a club. It used to be a bowling alley, so  
4 there is a lot of wood in there. So I hid everything  
5 in there. Then I went over to the Cafe Madrid and I  
6 spoke to Frankie, and Frankie told me they couldn't buy the  
7 whole thing, they had no money, that they could only buy  
8 one kilogram.

9 So I arranged -- and he said for that night.  
10 I went back to 14th Street -- I went outside the Cafe  
11 Madrid. I met Carl, Joe Novoa and Pete Daly, and I told  
12 them what I was going to do, so they wanted to know exactly  
13 what I do so that they can watch me to make sure nothing  
14 happens.

15 MR. COSTELLO: Objection to the conclusionary  
16 remarks. I want Q and A -- I want questions and answers.  
17 I want the time of day.

18 MR. FELD: Your Honor, the witness was  
19 saying what was said.

20 THE COURT: Don't argue with me. Objection  
21 overruled.

22 MR. COSTELLO: Exception, sir.

23 Q Will you continue, Mr. Boutureira?

24 A So I went downstairs -- this was late, because  
25 there was nobody in the club. That is the only time

THE COURT: Overruled.

Q Just tell us what they said to you.

A Well, they said to me that Joe Novoa and Pete Daly, they would stay in the park and watch the board where, you know -- where everything was -- where the package was, and Carl would be on 14th Street watching the Cafe Madrid to make sure nothing happened to me.

So I walked over to Cafe Madrid -- I have my car parked on 14th Street at that time, so I walked over to Cafe Madrid, and when I got there Frankie told me that everything was set, that he had the money, and he point out a couple to me.

Q Who was the couple?

A At that time I didn't know the name until later on, but it was supposed to be Jimmy the Greek --

MR. STONE: Objection to what it was supposed to be.

Q Who was it?

A It was Jimmy the Greek, and a girl, a Brazilian girl that I was introduced to later on by the name of Elissa or something like that.

So I went over to the kitchen with Frankie and he show me the package in a brown paper bag with the money. So I want to take the money and leave, and he say no, that



2 A (Continuing) I put all the money on top of the  
3 bed and we started counting it because the bunches were in  
4 thousands, I think it was -- anyway, we put them in thousands.

5 Q How much money was there?

6 A There was \$12,000.

7 So after the money was counted Carl -- Carl  
8 asked how the split was going to be, so Joe answered, "Four  
9 ways."

10 So we took \$3000 apiece and I left -- I don't  
11 know whether they left or went out with me -- that I don't  
12 recall. I know I left.

13 Q Was there any discussion while you were counting  
14 the money?

15 A Yes, sir. They were saying how it happened  
16 on the parking lot, that they saw this motorcycle come in  
17 and --

18 MR. COSTELLO: Objection. unless identification  
19 as to who said what to whom.

20 THE COURT: Overruled. Go ahead.

21 A (Continuing) This motorcycle come in with a  
22 man with a jacket -- a leather jacket or something, and he  
23 went over to the board, take the package from underneath  
24 the board and left it, and then a cab just pulled up and  
25 this man went over and threw the package inside the window

1 kp

22

Boutureira-direct

2 had another buyer but he did not know when the deal was  
3 going to go through.

4 So that night I went into Cafe Madrid and  
5 Frankie told me he had it set for the other sale.

6 Q When?

7 A Right then and there -- he had the men there,  
8 so he pointed out to me a man there.

9 Q Who was that?

10 A Joaquin -- Joaquin Nieves -- no, before that --  
11 before that -- before the sale -- before the sale -- the next  
12 day after I made the second sale to Jimmy the Greek I got  
13 a call from Frankie about 3 or 4 or 5 o'clock, and he told  
14 me he had to see me.

15 So I went over to Cafe Madrid and he told me  
16 that his people that I sold him the second kilo to, they  
17 wanted to meet me because there was some trouble, and I  
18 refused -- I told him I don't want to meet them because  
19 the agreement is I will not meet any of these people, I  
20 will have no relation with them.

21 MR. SCHWARTZ: Your Honor, may I move at this  
22 time to strike out all the references to Mr. Nieves, because  
23 the witness has obviously changed his mind.

24 THE COURT: Denied.

25 MR. FELD: Your Honor, I think the witness will



1  
2 A (Continuing) So they told me the package I had  
3 sold them, somebody had opened it and put something inside  
4 like to cut it but they didn't have time to mix it, so it  
5 was like a bundle there.

6 So I told them it couldn't be from me,  
7 because nobody but me touched the merchandise and it had  
8 to be the same. So then he started arguing with Jimmy the  
9 Greek and fighting, that maybe he had done it. I told him  
10 it had nothing to do with me.

11 So then he gave me his phone number and told  
12 me if I have anything else to call him direct and to forget  
13 about Jimmy.

14 I took the number. I gave that number to  
15 Carl, but then I don't know what happened to the number.

16 Q Did you ever see Jimmy the Greek again?

17 A Yes, practically every day I used to go to the  
18 Cafe Madrid, and everytime I was there I saw him there.  
19 He wanted to buy from me whatever I had, that he will give  
20 me more money than Frankie and to forget about Frankie,  
21 and I told him I didn't have anything, if I had it I will let  
22 him know, because I didn't want to deal direct with anybody.  
23 I didn't like it this way, so a few days went by and Frankie  
24 called me and he told me he had arranged for the third sale  
25 of the heroin, and I went over to the -- he said he didn't

21

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Boudureira-direct

• •

to my house.

3

THE COURT: With the money?

4

THE WITNESS: With the money. I put it away and a couple of days later when I saw Carl I told him I had the

5

money. We an appointment to meet and we met in my car and I gave each of them the one envelope with the money.

6

7

37.

Q Who was there?

9

A There was Carl, Joe Novos and Pete Daly.

10

MR. COSTELLO: What time and date.

11

Q How much money did you give them?

12

THE COURT: Yes.

13

This was the daytime.

14

THE COURT: That is a continual instruction. It is not possible always to identify it.

15

166

Q Was it during the day?

17

A This was the laytime.

18

MR. COSTELLO: Objection to the leading again.

19

He is trying to testify for the witness.

20

THE COURT: Overruled.

21

A This was daytime and I think it was in 13 Street right by the Maritime Union where we met, the three of us, where we met.

22

23

24

How much money did each of you receive?

25

36,000 apiece. I had more a ready.



THE WITNESS: I don't recall that.

THE COURT: Was it a week, two weeks?

THE WITNESS: Roughly, about that.

THE COURT: So when they came back it was two weeks about, since they had been away; is that it?

THE WITNESS: About that.

THE COURT: All right. Did you finally get the \$18,000?

THE WITNESS: Well, it was a balance left. It was maybe \$300 or \$400 left that they still owed me that I never collected. But I gave each one of them their money because that was my responsibility and that --

THE COURT: You gave Novoa and Daly and Carl?

THE WITNESS: No, your Honor.

MR. COSTELLO: Objection to your Honor's statement.

THE COURT: I beg your pardon?

MR. COSTELLO: I object to your Honor's statement about Detective Novoa.

THE COURT: I am asking him. He can correct it.

THE WITNESS: No, your Honor, I didn't give the -- I gave \$4,500 to Carl. I gave \$4,500 to Joe and the other \$4,500 I gave to Carl to give to Pete because Pete wasn't there.

THE COURT: So you gave \$4,500 to Novoa?

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Bouturcira-direct

2 THE COURT: Overruled. Mark it.

3 (Government's Exhibit 1 received in evidence.)

4 MR. COSTELLO: Would you note my continuing objec-  
5 tion, your Honor?

6 THE COURT: Of course.

7 MR. COSTELLO: Thank you, sir.

8 THE COURT: All right.

9 Q Mr. Bouturcira, yesterday morning you appeared in  
10 this courtroom; right?

11 A Yes, sir.

12 Q Did you plead guilty to a charge of conspiracy to  
13 sell and distribute narcotic drugs not in or from the original  
14 stamped package?

15 A Yes, sir.

16 Q Before Judge Wyatt; is that correct?

17 A Beg your pardon?

18 Q Before Judge Wyatt?

19 A Yes.

20 Q When are you going to be sentenced?

21 A June 27 that will be.

22 Q Do you know what the penalty for that crime is?

23 A Yes.

24 Q What is it?

25 A I understand it is anywhere between two and ten.



1 meeq 4b

Boutureira-cross

2 or something like that. I don't recall the conversation word  
3 by word.

7 4-5 4 Q Tell the jury --

5 THE COURT: Let him continue, please.

6 Go ahead.

7 A They asked me to sit down, if I want to have any-  
8 thing. I didn't feel like having anything. So they told me,  
9 you know, they told me that Carl had said the truth; that  
10 Carl had spoke to them and said the truth.

11 MR. STONE: I object and move that be stricken and  
12 certainly that the jury be instructed that that is not binding  
13 on the defendant Papadakis.

14 THE COURT: Overruled.

15 A So I sit down with them. I told them, all right,  
16 that I would say what I did. I would tell the truth. So they  
17 asked me what did I do, what was it I did. So I told them  
18 everything, just like I say everything before.

19 Q Before you started to talk did either MR. Giuliani  
20 and Mr. Puccio advise you that you were a target and you had  
21 the right to select an attorney of your own choice?

22 A Yes.

23 Q What did you say when they advised you of that?

24 A Well, I said what I have done I have done, and I  
25 was sorry I had done it and if I had to pay for it I would.

2 (Question read by the reporter.)

3 Q Was it the fall? Was it winter? Was it  
4 summer? Was it spring?

5 A I don't know.

6 Q Could you tell the ladies and gentlemen of  
7 the jury the approximate year that you met Detective Joseph  
8 Novoa?

9 A Well, I know Joseph Novoa was a partner in the  
10 Police Department with my brother-in-law. I met him a few  
11 times with him.

12 Q The question, sir, is when. Does that refresh  
13 your recollection, if you think back?

14 A It could be -- it could be 1969. It could be  
15 the beginning of '70.

16 Q You told the ladies and gentlemen of the jury  
17 that in 1970 you were selling narcotics, is that correct,  
18 sir?

19 A Yes.

20 Q Were you selling narcotics in 1969?

21 A No, sir.

22 Q After you started to sell narcotics did you  
23 carry a gun?

24 MR. FELD: Objection, your Honor.

25 THE COURT: Sustained.



1 mebr 221

Boutureira-cross

2 nothing to do ever with any transactions with this fellow  
3 Jimmy.

4 Q There came a time when you went to the Hotel Taft  
5 and a certain quantity of money, many thousands of dollars,  
6 was divided up between yourself and various police  
7 officers: is that correct?

8 A Three police officers, \$12,000.

9 Q Was Jimmy there?

10 A No, sir.

11 Q Did he have anything to do with that?

12 A Not that I know of.

13 Q Do you remember testifying before the grand jury  
14 in this case?

15 A Yes, sir.

16 Q Page 18 of the grand jury testimony, line 16 --  
17 well, let us start with a question:

18 Q And did Novoa while each of you was individually  
19 counting the money to determine how much was there tell  
20 you basically what they had observed while you were in the  
21 bar and they were out on the street surveilling the actual  
22 transfer of the heroin?

23 A Well, I don't remember it was Jimmy -- was Joe  
24 or somebody else, but between us that's what they said."

25 I don't recall that.

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20 FRANK RAMOS, called as a witness in behalf of  
21 the government, after having been duly sworn, testified  
22 as follows:

23 DIRECT EXAMINATION

24 BY MR. DELANEY:  
4 Q Directing your attention to the period p 240  
5 April or May 1970, did you have occasion to speak to  
6 Mr. Boutureira in connection with narcotics?

7 A Yes, I did.

8 Q Would you tell us what that conversation was?

9 A Mr. Boutureira approached me and told me that he  
10 had some narcotics available that were for sale and if I knew  
11 of anybody that I could connect with him or through me in  
12 order to sell them.

13 Q Did he tell you what kind of narcotics he had?

14 A Those were heroin.

15 Q And what did you say to him?

16 A I said, "Well, I know a couple of places where  
17 I know that some people that use narcotics frequent and  
18 I will try to find out who is willing to buy."

19 Q So what did you do?

20 A I proceeded -- I asked Boutureira to give me some  
21 samples.

22 Q Did he give you those samples?

23 A Yes, he did.

24 Q When you got the samples, what did you do?

25 A Well, I kept a couple of them and then I carried



1 half-kilo to give to Lorenzo without money. Later on  
2 Lorenzo came back and gave me \$4500, of which I turned  
3 over to Salvador. Salvador gave me \$250 of that money,  
4 and then Salvador and Lorenzo by this time were already  
5 friends and socializing together, and I know nothing else  
6 about it.  
7

8 Q Mr. Ramos, on Wednesday you appeared in this  
9 court before Judge Wyatt, did you not?

10 A I cannot hear you.

11 (Question read.)

12 A Yes, I did.

13 Q And you entered a plea to the information --  
14 a plea of guilty to an information charging you with con-  
15 spiracy to sell, distribute narcotics not in or from the  
16 original stamped packages, is that correct?

17 A I did.

18 Q And when are you scheduled to be sentenced on  
19 that charge?

20 A June 27th.

21 Q During 1973 did you enter a guilty plea to a  
22 similar charge in the Eastern District of New York before  
23 Judge Weinstein?

24 A I did.

25 Q And when are you scheduled to be sentenced on

1 kp 256 Ramos-cross 340

2 CROSS EXAMINATION

3 BY MR. COSTELLO:

4 Q Mr. Ramos, would it be fair to say that you knew  
5 practically everyone in the City of New York who was  
6 involved in the purchase and sale of narcotics?

7 A I don't think that is a fair question.

8 Q All right. Would you say that you knew many  
9 people --

10 A Yes.

11 Q -- who were involved in the purchase and sale  
12 of narcotics?

13 A Yes.

14 Q Would it be fair to say that you frequented after-  
15 hour spots, various restaurants and various bars acting as  
16 a broker for buyers and sellers of narcotics?

17 A In the instances that I have already admitted.

18 Q And during this period of time you learned names,  
19 aliases and modes and methods of operation, isn't that  
20 correct?

21 Would you speak up, please --

22 A Yes, sir.

23 Q -- so the jury can hear you?

24 A Very well.

25 Q If you don't understand any question, sir, just



2 yes.

3 Q And then you were charged with the second case?

4 A Yes.

5 Q And when did you plead guilty to the second  
6 case?7 A Let's see -- I think it was in May or June of  
8 '73 -- I am not sure. Please don't hold me to that because  
9 I can't remember.

10 Q And you haven't been sentenced yet?

11 A I am going for sentencing May 31st.

12 Q You pleaded a year ago approximately, is that  
13 right?

14 A Yes.

15 Q During that one-year period, did you give  
16 information to the government?17 A On the Eastern District Court they have asked me  
18 questions pertinent to investigations --

19 Q And you have given them answers?

20 A And I have given them answers, yes.

21 Q You were first arrested, then, in 1971, is that  
22 correct?

23 A Yes.

24 Q Is this the first case you have ever testified  
25 against anyone?

1  
2 of \$10,000 or a kilogram of cocaine?

3 A This is relating to the Casanova couple that  
4 were at the Hotel Belvidere. Carl Aguiluz had them under  
5 surveillance and these people were awaiting somebody to  
6 come up from South America with narcotics. Carlos wanted  
7 me to tell him at the time that they were ready to receive  
8 the narcotics -- at this time when these people were to  
9 receive the narcotics I would be meeting with them and  
10 propose that I was going to buy the narcotics from them.  
11 Carlos would arrange some kind of an arrest of these people  
12 and myself. I was to be released and he would communicate  
13 to the Chileans that I had paid my way out, and then he  
14 would straighten the matter with them somehow or other,  
15 and for that type of services that I would render unto him  
16 he was to give me a kilo of cocaine or \$10,000, which was  
17 the equivalent of the value of the narcotics.

18 Q Would you tell the ladies and gentlemen of the  
19 jury the approximate date of this transaction with Aguiluz?

20 A In March of 1971.

21 Q Isn't it a fact that at the time of this trans-  
22 action you told the ladies and gentlemen of the jury that  
23 Detective Novoa was not a part of the team which Aguiluz  
24 was assigned to?

25 A I have repeatedly stated that I know of Novoa



1 only of name. He might know of me I might have heard of  
2 him. He might have come to my restaurant. But I do not  
3 know Detective Novoa.  
4

5 Q I will accept that, sir. I will ask you a few  
6 more questions.

7 Did Detective Aguiluz tell you that he was setting  
8 up a plan to "Stick up cocaine dealers, arrest them with  
9 a small quantity of cocaine and keep the balance of the co-  
10 caine and the money for himself"?

11 A Well, only with the instance of this particular  
12 couple do I know of my own knowledge that this would occur.  
13 We did not discuss other people except that he wanted in-  
14 formation and that later on if this had gone through we  
15 probably would have approached the same kind of situation.  
16 I have to say that I was reticent at all times.

17 Q Would you amplify upon that statement you just  
18 made, sir?

19 A I can't any more --

20 MR.FELD: Objection.

21 THE COURT: It is such a general question that  
22 to amplify --

23 Q Would you tell the ladies and gentlemen of the  
24 jury whether or not there were additional conversations  
25 with Aguiluz relating to the sticking up of narcotics

dealers, taking the bulk of the narcotics and all the cash?

A I don't recall any more conversations than this one, except in a very ambiguous manner.

Q In other words, you don't recall it?

A That is correct.

Q Except in what you call an ambiguous manner?

A Generalities.

Q Of the same thing, a stick up?

A Not stick up. That is a word used by yourself, sir. I wouldn't use that word.

Q I ask you, if I may, whether this term is used in the summary which is in evidence.

A May I see it?

Q Yes, sir, there on the second page it says:

"Ramos believes that Detective Aguiluz was planning to stick up the cocaine from the Chileans and then arrest them with a small quantity of cocaine and release them on bail so that they could get out of the country."

Did I read that correctly?

A Who wrote this?

Q I don't know whether it is Mr. Feld's secretary or --

A It doesn't say Frank Ramos. It is not quoting me



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1  
2 A Yes, between myself and Novoa and Daly.

3 Q And did you follow the car?

4 A We did.

5 Q Tell us where you followed the car?

6 A We followed the car down 7th Avenue to an area in  
7 the vicinity of Grove Street and 7th Avenue.

8 Q Then what did you do?

9 A We observed two of the individuals in the car again  
10 leave the car, and went into a delicatessen. At this time  
11 the tail was combined between my car and Daly's car.

12 Q What do you mean by "the tail was combined"?  
13 Will you explain that.

14 A Well, there were two vehicles used in the tail.

15 Q Your vehicle was one of them?

16 A Yes.

17 Q Who was in your vehicle?

18 A Myself and Detective Novoa.

19 Q And the other vehicle?

20 A Daly's car contained Daly.

21 Q What happened at the delicatessen?

22 A Some few minutes after the individuals went into  
23 the delicatessen, Novoa and Daly followed them into the store.  
24 Approximately a few minutes later Detective Novoa returned to  
25 my car and informed me that there was conversation between the

P. 456

13  
14  
15

CARL AGUILUZ, called as a witness by the  
government. Being first duly sworn, testified  
as follows:

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4  
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25

Q Tell us what else happened?

1468

A I recall that there came a time where Detective  
Novoa and myself entered the vehicle containing the four oc-  
cupants, followed by Detective Daly in his car and proceeded  
to New York City.

Q And what occurred when you arrived back in New York  
City?

A I recall that Emilio Gonzales informed us that he  
resided in New York, in the vicinity of 18th Street on the  
west side. After a time I recall that in an attempt to locate  
his premises and after some futile half dozen attempts, in an  
area of Grove Street and 7th Avenue, once again we stopped the  
car.

Q And what happened when the car was stopped?

A I exited from the occupants' vehicle and proceeded  
to Detective Daly's car to inform him that I had decided to  
once again identify these individuals to the best of my  
ability.

Q And what did you do?

A I went back to the vehicle containing the four oc-  
cupants, plus Detective Novoa and I asked Gonzales for his  
identification papers once again.

Q And what did Gonzales do?

A He handed me a portfolio containing three passports



THE WITNESS: Inside the apartment.

THE COURT: That is apartment 4-F, on West 19th Street?

THE WITNESS: That is correct.

THE COURT: All right.

Q Can you tell us what Detective Novoa said in response?

A To my recollection he said "fine."

Q What occurred after that?

A The next recollection I have is that a call was placed to Lieutenant Egan once again and he was informed that a large quantity of narcotics was seized.

Q What else occurred.

A I recollect that myself, Detective Novoa and Daly had a conversation where we discussed the possibilities of getting a warrant on the apartment, at 210 West 19th Street in order to tighten up the arrest.

Q What was the result of that conversation?

A Ultimately I recall I left the apartment 4-F and proceeded to the Manhattan DA's office to get a warrant for the premises.

MR. COSTELLO: Can we have a time, your Honor?

THE COURT: Yes. This is April 15, I take it. About what time of day?

THE WITNESS: I departed from the apartment, your

1  
2 A Yes, sir.

3 Q And can you tell us what occurred at the 6th  
4 Precinct when you arrived there?

5 A Our main activity at the 6th Precinct was the  
6 processing of the prisoners and vouchering, preparing the  
7 necessary papers for the arrest and any other papers that are  
8 necessary when consummating an arrest.

9 Q Did there come a time when you had a conversation  
10 with Novoa and Daly concerning the \$1,200 that had been  
11 seized from the four subjects?

12 A Yes. I recollect a conversation to that effect  
13 where Detective Novoa stated to me that Sergeant Stefania  
14 was insistent on splitting the money that was there, this  
15 approximately \$1,200. I recall that Detective Novoa was very  
16 upset about this and my best recollection that I have is that  
17 the money was split and I was handed an amount of money.

18 Q Did Novoa tell you why he was upset about it?

19 A Yes. I recollect that he was upset because in the  
20 past we had split other money with Sergeant Stefania and that  
21 he was upset because of the fact that Stefania was insistent  
22 on splitting up such a small amount of money at this time.

23 Q What occurred?

24 A As I stated before, I do recall that I received an  
25 amount of money, approximately one-fifth of the \$1,200 from



1 the April 15, 1970 seizure when you had a further conversa-  
2 tion with Novoa and Daly about this valise?  
3

4 A Yes, sir. I recall a conversation that took place  
5 at the Club Espana on West 14th Street relating to this  
6 valise.

7 Q Could you tell us what you recall was said by you,  
8 by Novoa and by Daly?

9 A I recall that the conversation revolved around the  
10 subject of what to do with this valise. I recall that  
11 Detective Novoa told me "Maybe we should throw it in the  
12 river." At that time I recall that I agreed with him and  
13 not exactly who said what, but I recall Daly saying that  
14 maybe we ought to think this thing over and perhaps not dump  
15 it in the river.

16 Q What else was said?

17 A I recall that it was agreed later or Detective Daly  
18 wanted to sell the narcotics.

19 Q What occurred?

20 A In fact, it was agreed that we would sell the  
21 narcotics.

22 Q When you say agreed, what do you mean? What was  
23 said and by whom?

24 A Well, it was stated by Daly "Let's sell the narcotics."

25 I retaliated by saying "The next thing we have to

do is find something as a conduit to sell the narcotics."

I also recall saying that I suggested my brother-in-law be used for this purpose.

Q What did Novoa and Daly say to that?

A It was a good idea.

Q Did they both know your brother-in-law?

A Yes, sir.

THE COURT: Is this the same conversation in the Club Espana where the first suggestion was that they throw the valise in the river?

THE WITNESS: Yes, sir.

THE COURT: It is the same conversation?

THE WITNESS: Same conversation.

THE COURT: And in that conversation ultimately you say the three of you decided to sell the narcotics through your brother-in-law?

THE WITNESS: That is correct, your Honor.

THE COURT: All right.

Q Did there come a time when you left that valise at your brother-in-law's house?

A Yes, I did.

Q Approximately how long after this conversation did you do that?

A I don't recall exactly, but I could place it in



of the narcotics or us. He stated to me that he would try, and that is what I recall of that conversation.

Q Did you tell him at any time how much narcotics was involved?

A I stated to him that there was approximately 5 bags inside the suitcase.

Q Did you identify the narcotics any further?

A I don't recall.

MR. SCHWARTZ: Objection, leading, your Honor.

THE COURT: I will permit it.

A There came a time in the apartment or his home -- in the apartment that we did that.

Q When did that occur?

A As I best recollect, the same day that I had the conversation with him on 14th Street.

Q You went to his home?

A Yes.

Q Tell us what was said there and what was done there?

A The best recollection I have is that I showed him the narcotics. He stated to me how much did I want the narcotics sold for and I said to him, "We don't care how much you get, just get rid of it."

Q Did you tell him what the narcotics were?

MR. SCHWARTZ: I object to the leading of the witness.

1 THE COURT: Yes, try to avoid leading questions as  
2 far as you can, Mr. Giuliani.  
3

4 All right, let's go on.

5 Q Was there any further conversation at that time?

6 A The further conversation I recollect is that at the  
7 meeting at his home we opened the suitcase and at that time  
8 I told him that I thought there was three kilo bags of heroin  
9 and two kilo bags of --

10 MR. SCHWARTZ: I object to what he thought.

11 THE COURT: He told his brother-in-law of this.  
12 Go ahead.

13 Q I'm sorry. You told your brother-in-law you thought  
14 what?

15 A The valise contained three kilo bags of heroin and  
16 two kilo bags of cocaine.

17 MR. COSTELLO: I agree with Mr. Giuliani, sir.  
18 I get about every other word of what this man says. I know  
19 your problem.

20 THE COURT: Keep your voice up. Let's go on.

21 Q Did there come a time after this conversation with  
22 your brother-in-law that you, Novoa and Daly were conducting  
23 a surveillance in the area of the Cafe Madrid?

24 A Yes, sir.

25 Q Can you tell us what occurred?



1

2

A Yes, sir.

3

Q Where were you at that time?

4

A At that time we were located in a basement of a building situated on 13th Street and 7th Avenue.

6

Q By "we" who do you mean?

7

A Myself, Detective Novoa and Daly.

8

Q Was this a legal or illegal wire tap?

9

A This was an illegal wire tap.

10

Q Can you tell us what you overheard, as you recall?

11

A If I recall, I overheard Sal in conversation in the Madrid with an unknown party on the phone and I further recalled that at the time the unknown party was telling Sal that he was in a subway station attempting to place a package in a locker.

16

MR. SCHWARTZ: May we approach the side bar for a moment?

17

18

THE COURT: Yes.

19

(At the side bar.)

20

MR. SCHWARTZ: Your Honor, I know the government has to present their case the best way they know how. Nevertheless I must strenuously object on behalf of the defendant Nieves to any reference to illegal wire taps and to the fruits thereof with regard to evidence coming into this trial.

24

25

MR. STONE: I will join in that objection in behalf

1 mceg

Aguiluz-direct

06

2 of the defendant Papadakis.

3 It is also part of the conspiracy count where they  
4 are not named as co-defendants.

5 MR. GIULIANI: They have no standing.

6 THE COURT: But Nieve and Papadakis are named in  
7 the conspiracy count in count 4 and I have been taking this  
8 evidence subject to connection as against Mr. Schwartz'  
9 client despite Mr. Schwartz' objection on the theory that it  
10 might be admissible under the count 4 conspiracy count.

11 MR. SCHWARTZ: I agree.

12 THE COURT: And subject to your motion later.

13 MR. STONE: I have also, I believe, reserved the  
14 right to strike, but this particular conspiracy is for construct-  
15 ing justice and use of an illegal wire tap is part of the  
16 obstructing.

17 MR. GIULIANI: No, it is part of the conspiracy  
18 to sell narcotics, second transaction.

19 THE COURT: Yes. This is the subway locker trans-  
20 action to which Boutureira has already testified. I think  
21 it is admissible on the same basis.

22 MR. SCHWARTZ: Our objections are noted.

23 THE COURT: Of course.

24 (In open court.)

25 Q Did you have a conversation with Daly and Nevoa



charges against the offenders.

MR. GIULIANI: That is right.

THE COURT: But he isn't talking about any offenders.

MR. GIULIANI: He will in a minute, your Honor.

I understand the evidence is that this attorney who was involved --

MR. COSTELLO: Who is the attorney?

MR. GIULIANI: Michael Santangelo who was involved in the Leguizamon-Diaz case, the case that was made two weeks before the hundred kilo case.

MR. COSTELLO: Defense counsel for Leguizamon?

MR. GIULIANI: Yes, sir, he is.

Shortly after the hundred kilo case, while this negotiation was pending to fix the Leguizamon case, once again the same person Lamatina, spoke to these offenders and offered them \$150,000 to fix the kilo case. He said he wouldn't do that unless he paid them the money. The detectives wouldn't talk to him about that unless he paid them the money he owed them on the earlier case. As a result there are if he paid \$5,000 on the earlier case.

THE COURT: So what you are telling me is that although these particular questions don't relate to the offenders you believe that it will be connected?

MR. GIULIANI: Yes, sir.

1  
2 MR. COSTELLO: Well would you so instruct the jury?

3 THE COURT: No, I better not do that.

4 (In open court.)

5 MR. COSTELLO: In view of the side bar conference,  
6 I wonder if MR. Giuliani during his Q and A might designate  
7 the parties and their relationship to each other.

8 THE COURT: All right, you can have that in mind,  
9 if you like, Mr. Giuliani.

10 MR. COSTELLO: Thank you.

11 THE COURT: Let's go on.

12 Q Once again, Detective Aguiluz, this meeting with  
13 Detective Lamatina occurred between the end of March and  
14 before April 14, 1970; is that correct?

15 A Yes, sir.

16 Q Who was present at this meeting?

17 A Myself, Detective Novoa and Daly.

18 Q And Detective Lamatina?

19 A Of course.

20 Q Can you tell us what was said?

21 A Lamatina stated to us that he was serving as an  
22 intermediate -- I am vague on this -- for the attorney for  
23 Leguizamon and Diaz, someone by the name of Santangelo.  
24 Also another name that he mentioned was DiStefano. He told  
25 us that there was some money involved if we could fix the case.



Q What did you, Daly or Novoa say?

A I recall Novoa stating that a \$25,000 figure would be acceptable to us and I also recall that Daly and myself had no objections to that affect.

Q What occurred, if anything else, during that conversation?

A That is the best of my recollection that I have at that time.

Q Any further readings with Detective Lamatina before April 14, 1970?

A Yes, I recall another time where Daly told Novoa and myself that Lamatina wanted to see us again and we did meet, in fact, with him and turned over some personal papers belonging to Leguizamon and Diaz over to him.

Q Any further meetings with him before April 14, 1970?

A The only recollection that I have is that Novoa verified the fact to me.

MR. COSTELLO: Objection to the characterization as "verified," your Honor. I want to know who said what to whom and the time, date and place.

THE COURT: Go ahead.

Q Would you do that?

A The time would be sometime after the April 15 arrest. The place somewhere in the vicinity of SIU. Novoa stated

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Q Did Mr. Mendez have approximately \$15,000 on his person or in his personal effects?

A As was related to me by Detectives Novoa and Fox, yes.

Q Did you keep any of that money?

A I was given approximately \$2,250 by Detective Fox.

Q Did you keep approximately \$10,000 of that money?

A I would say, to be accurate, collectively, the four detectives involved or the five detectives involved kept in the vicinity of \$11,000.

Q I will ask you, sir, if you remember being asked these questions to which you gave these answers which are at page 102 commencing at line 16 of the New York City Police Department hearing on April 22, 1974.

MR. GIULIANI: May we have a moment to get that out, please?

MR. COSTELLO: Yes, take your time.

MR. GIULIANI: All right.

Q Now, in October of 1969 did you arrest a man named Arseino Mendez?

A Yes, sir.

Q During the course of that arrest did you seize some money?

A Yes.



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A No, sir.

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Q And you never asked them how much money they were getting?

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A No, sir.

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Q In your experience as a detective have you ever tested, field tested cocaine?

8

A I have no specific recollection of that.

9

10

Q Could you tell from looking at a package the difference between cocaine and heroin?

11

A I would say yes.

12

Q What is the difference?

13

A Cocaine is more crystalline than heroin.

14

Q Is it different in color?

15

16

A It is basically white except that cocaine is shinier than heroin.

17

18

Q Did you discuss the difference in appearance of cocaine and heroin with your brother-in-law?

19

A I don't recall specifically doing that.

20

21

Q Did you ever discuss cocaine and heroin with Mr. Ramos?

22

A No, sir.

23

24

Q You didn't know Mr. Ramos was receiving these drugs; is that correct?

25

A That is correct, sir.

Lamattina.

N I C H O L A S       L A M A T T I N A, called as a witness  
by the government, being first duly sworn,  
testified as follows:

you answer it in that form that it never happened.

A     As far as I'm concerned it never happened.

Q     In the period of time, sir, that you have been  
associated with the other police officers in the team,  
Daly, Novoa and so forth, to your knowledge did they ever  
give false testimony under oath?

A     I believe they did, yes.

Q     And you are aware of the fact that they were  
doing so, were you not, or became aware of the fact that  
they were doing so?

A     I have general knowledge, no specific cases.  
If you point out the cases I will tell you.

Q     And those were cases that you took part in as  
part of the team; is that correct?

A     All cases were part of the team, Novoa, myself  
and Daly.

Q     In many of the same cases in which they committed  
perjury you also testified; is that correct?

A     Not true in all cases, no.

Q     I said in many of the cases, not all of them?

A     You would have to be specific.

Q     In some of the cases?

A     You would have to be specific.

Q     Do you remember a case in which the team, Daly,



Q And where did this meeting take place?

A This meeting took place on South Street in the vicinity of the First Precinct Station House.

Q How close to the First Precinct?

A Maybe a block or two away.

Q And was anyone else with Detective Daly at the time you met with him?

A Yes, there was Detective Novoa, Detective Aguiluz and Detective Daly.

Q And where did you meet, if you remember?

A We met in an automobile.

Q Do you remember the kind of automobile?

A It was a dark car -- I think it was a Buick Skylark or something.

Q Did you have a conversation?

A Yes, we did.

Q Will you tell us what you said and what the other participants in the conversation said?

A I explained to the detectives that I spoke with Michael Santangelo, the attorney on the case that they had, and if they could do anything for the defendant that he was representing, and they said they can but Michael Santangelo has to show good faith in a matter that he had that they had previously with the attorney Santangelo where

1  
2 you handed the money to, if you recall?

3 A I don't remember who I handed the money to,  
4 no, sir.

5 Q And what happened after you handed them the money?

6 A We were discussing the 100 kilo case, a price  
7 of what would be wanted by the detectives.

8 Q And when you say "we were discussing", who was  
9 present?

10 A Detectives Novoa, Aguiluz and Daly.

11 Q And who was speaking, if you remember?

12 A Well, we were all talking. I mean, it wasn't  
13 any one particular person. We were just -- you know, every  
14 time I said something, one would answer, then the other would  
15 answer. They all would agree.

16 MR. COSTELLO: I object to this characterization,  
17 your Honor. We want to know who said what to whom, when and  
18 where.

19 THE COURT: If you are able to do it.

20 THE WITNESS: No, sir.

21 THE COURT: He says he can't. All right.

22 Q Will you tell us as best you remember what  
23 occurred at this conversation?

24 A I asked them what could be done with this case and  
25 they said they could take care of it, and the price was



6 by the government, being first duly sworn,  
7 testified as follows:

2 MR. GIULIANI: Pardon me?

3 THE COURT: Is this just to prove when he knew  
4 Detective Novoa?

5 MR. GIULIANI: No, prior similar actions.

6 THE COURT: No, I won't permit it.

7 Q Did there come a time, Mr. Lamattina, when you were  
8 indicted in approximately June of 1972 for bribery, obstruction  
9 of justice and possession of government property?

10 A Yes.

11 Q Would you tell us what that case involved,  
12 briefly?

13 A That case involved an attorney named Edmund Rosner  
14 and an investigator by the name of Nicholas de Stefano.  
15 It was a case where Edmund Rosner and Nicholas de Stefano had  
16 a pending case in the Southern District, and I introduced  
17 them to another detective who was supposed to purchase  
18 3500 material and other material that would help them in  
19 their case.

20 Q And did you at some point in November 1970 plead  
21 guilty to that charge, or the charges contained in that  
22 indictment?

23 A Yes, sir, I did.

24 Q November 1972.

25 And was that in this court?

1  
2 on the part of the government that we have to show that he  
3 knew that Aguiluz, Novoa and Daly were the source of the  
4 heroin of Boutureira.

5 It seems to me that it is sufficient to show  
6 that he knew that there are other people who are involved  
7 in this distribution of heroin particularly where there  
8 are two kilos of heroin that are involved and that that  
9 evidence shows participation in a substantial conspiracy.

10 THE COURT: I don't think so. The motion is  
11 granted as to Count 4 as to Papadakis and Nieves.

12 MR.SCHWARTZ: Thank you, your Honor.

13 THE COURT: Of course the substantive counts stand.  
14 The jury can find that the defendants Papadakis and Nieves  
15 are guilty of purchasing if they believe the government's  
16 evidence.

17 MR. SCHWARTZ: One thing, your Honor, in line  
18 with that. Of course in line with previous motions made,  
19 just for the record, I would call now to your Honor's  
20 attention all of the objections that were made pretrial by  
21 way of motions and during the trial by way of applications,  
22 and I must at this point, your Honor, press your Honor  
23 to sever the defendant Nieves and ask your Honor to issue  
24 an order to that effect.

25 Now, I say that to your Honor for this reason:



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2 them out at any hour this evening, fine, we have no objection,  
3 but I want them to get it today. I suggest that we move  
4 forward now, your Honor.

5 THE COURT: All right.

6 MR. COSTELLO: Thank you.

7 THE COURT: I don't like to go against the  
8 unanimous opinion of counsel, so all' right.

9 (Jury in box.)

10 THE COURT: All right, Mr. Giuliani.

11 MR. GIULIANI: Judge Wyatt, Mrs. Hernandez,  
12 Ladies and Gentlemen of the Jury:

13 This is a case where a public official took a  
14 solemn oath to honestly and fairly enforce -- specifically  
15 to enforce some of the most important laws that regulate  
16 our society -- the laws against narcotics, and he arrogantly  
17 and blatantly violated that oath and became what he was  
18 pursuing: a dealer in heroin and cocaine.

19 The only distinction between the three defendants  
20 who sit at that table are the different roles they played  
21 in distributing heroin and cocaine. Each --

22 MR. COSTELLO: I will object to this, your Honor.

23 THE COURT: Overruled.  
24  
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2 MR. COSTELLO: Did your Honor indicate that

3 they are separate and distinct parties throughout; that they  
4 have separate and distinct counsel, separate and distinct  
5 positions and evidence which he introduced?

6 THE COURT: Of course I agree with that.

7 MR. COSTELLO: Thank you, your Honor.

8 MR. GIULIANI: It is impossible for one person  
9 alone to distribute five kilograms of narcotics. Each one  
10 of these defendants played a different role in distributing  
11 that narcotics. We have heard a lot of name calling for the  
12 last two or three hours. We have heard a lot of yelling.  
13 We have heard a lot of posturing. Why don't you and I talk  
14 about the facts in this case.

15 The facts go back to April 14, 1970 when Novoa,  
16 a so-called detective --

17 MR. COSTELLO: Objection, your Honor. That is  
18 unfair comment. Detective Novoa is a police officer,  
19 not a so-called police officer.

20 THE COURT: These are counsel's summing up argu-  
21 ments and I will permit them, Mr. Costello.

22 MR. GIULIANI: Novoa and his partners  
23 Aguiluz and Daly were out in the area of 14th Street and  
24 Seventh Avenue when they noticed four suspects and followed  
25 those four suspects to New Jersey and in New Jersey, after



cotics away."

They had already stole money. As you found out at this trial, they had already negotiated to sell out cases. They had already taken thousands and thousands of dollars and now the next step would occur. The next step. They decided, yes, they would try to find a way to unload these narcotics, to sell these narcotics, and they decided that they couldn't do it themselves. They couldn't deal directly with a narcotics connection hand to hand, so they had to get a front man, someone who would handle the packages for them and distribute them.

Both Daly and Novoa knew Salvador Boutureira, Aguiluz' brother-in-law, and it was decided that Boutureira would be used as the man to make the connection for them. Aguiluz visited Boutureira at his home, didn't find him there, left the package under Boutureira's bed and went looking for him and found him on 14th Street. Aguiluz went back to Boutureira's house with him and explained to Boutureira what he had left with him.

MR.COSTELLO: That isn't the testimony, your Honor. Boutureira said that it was five days later.

MR. GIULIANI: I will read the testimony to the jury.

THE COURT: Mr. Costello, I have said before -- it is

2 testified, went to some after hours places to see what was  
3 around, as to who was available who could handle kilos of  
4 heroin and cocaine, and he came up with Jimmy the Greek who  
5 asked to see the samples and was given the samples and  
6 they eventually decided on a price of \$12,500 for the cocaine,  
7 \$500 being Ramos' commission for having put the deal to-  
8 gether.

9 Prior to the first sale, and that is the sale that  
10 took place near the White Tower with the man in the black  
11 leather jacket, Boutureira, Novoa, Aguiluz and Daly meet and  
12 it is agreed that Boutureira will put a one kilo package  
13 under a board in back of the White Castle in the area of 13th  
14 and Eighth Avenue and this will be done so the detectives  
15 can observe and watch the passage of the narcotics so that  
16 their investment is protected.

17 Boutureira does that. He puts the narcotics under  
18 the board and he goes to the Cafe Madrid. When he walks in  
19 Jimmy the Greek is sitting at the bar with a woman named  
20 Elissa Possas. He is not going to deal with them. This  
21 is what Ramos is getting paid for. Ramos is going to deal  
22 with them, so he goes to Ramos and tells Ramos "The narcotics  
23 are now available, give me the money and I will tell you where  
24 it is."

25 Ramos goes over to Jimmy the Greek and he comes



1 back after a short conversation and he takes Boutureira  
2 into the kitchen. While in the kitchen he shows Boutureira  
3 the cache and at that point Boutureira tells Ramos where  
4 the narcotics are located. Ramos goes back to Jimmy the  
5 Greek and he tells him where the narcotics are located and  
6 at that point Jimmy the Greek signals to a male, an  
7 unidentified male with a black leather jacket, who walks  
8 in and Jimmy the Greek tells him where the narcotics are  
9 located.  
10

11 Then the detectives, if you remember, who were  
12 watching this, observe the male pick up the package, drive  
13 out, drop it in a cab and drive away. Shortly after that  
14 there is a telephone call received at the Cafe Madrid and  
15 Jimmy the Greek is informed that everything is okay; that  
16 the passage of the narcotics worked out.

17 At that point Jimmy the Greek tells Ramos to  
18 release the money and Ramos gives Boutureira \$12,000,  
19 the remaining \$500 for himself.

20 Boutureira puts the money in his shirt, gets  
21 into his automobile and pulls away, the detectives following  
22 him. They get in front and they drive to the Hotel Taft.  
23 At the Hotel Taft they all go upstairs, Novoa, Daly, Aguiluz,  
24 Boutureira, to a room, and in that room Boutureira takes  
25 out the \$12,000 and he puts it on the bed and Novoa is

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asked "How shall we split the money?"

And Novoa says, "We should split it four ways,  
and the money is split \$3,000 to Novoa for the first sale  
of the first kilogram of heroin, \$3,000 for Aguiluz, \$3,000  
for Daly, \$3,000 for Boutureira.



T3

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2 The second sale takes place a few days after,  
3 and that sale involved the placing of the second kilo of  
4 heroin in the subway locker and going to the Cafe Madrid,  
5 and in this case the key was turned over directly by  
6 Boutureira. He went and picked up the narcotics, who  
7 told Ramos that the money could be released, and Bou-  
8 tureira was paid \$12,000 again for the second kilo of  
9 heroin.

10 The very next day Boutureira received a call  
11 from Ramos. Ramos told him that he had been told by Jimmy  
12 the Greek that there was something wrong with that second  
13 package, that it had been opened and cut -- that means  
14 diluted -- and that he, Boutureira, had better meet Jimmy  
15 the Greek, that there would be an awful lot of trouble;  
16 that he, Ramos, couldn't handle it.

17 So there was a meeting between Jimmy the Greek,  
18 Boutureira and Ramos in part of the meeting in which it  
19 was discussed, and there was some argument about who, if  
20 anybody, cut the narcotics.

21 Finally that argument was resolved, and Jimmy  
22 the Greek at that point asked Boutureira if Boutureira had  
23 any other narcotics, and if he did have any other  
24 narcotics to get in touch with him.

25 At this point Ramos decides, "We are going to

1 kp2

2 try to find another buyer," -- you see, Ramos is getting cut  
3 out. Boutureira is going to deal with Jimmy the Greek  
4 directly, and he goes the very next day and calls up  
5 Boutureira and tells him, "I have another buyer for the  
6 third kilo of heroin, that guy is the guy who comes into  
7 Cafe Madrid, a frequent visitor there, someone you know,  
8 Joaquin Nieves" -- that is this defendant right here  
9 (indicating).

10 Boutureira comes down to the Cafe Madrid,  
11 discusses it with Ramos and Ramos discusses it with Nieves,  
12 and Nieves and Ramos agree on a price, again approximately  
13 \$12,500, so that Ramos can get his \$500 from the sale of  
14 this heroin.

15 Ramos got this from Boutureira, who gets that  
16 money. He Goes back to the Club Espana where he was  
17 secreting the drugs and he takes the kilo of heroin and he  
18 puts it in his car and he drives to the Cafe Madrid and he  
19 parks in front, and he goes inside and tells Ramos that  
20 the heroin is in the car. Ramos goes to Nieves, tells  
21 Nieves that. Nieves is now carrying in his hand a news-  
22 paper. He goes to the automobile, the front seat of the  
23 automobile, and he takes out the kilo of heroin and he  
24 puts it in the newspaper so that he can hide it.

25 He then goes back into the bar. He was at the



1 kp3

2 bar with several women and he turns that kilo over to one  
3 of the women, and he calls Ramos over and tells him "Okay."

4 Ramos goes to Boutureira and gives him \$12,000,  
5 keeping \$500 for himself.

6 Now Boutureira has \$24,000 -- the \$12,000 from  
7 the sale to Jimmy the Greek and \$12,000 from the sale of  
8 that gentleman sitting right there, Mr. Nieves (indicating).

9 And he was keeping it in an East Side apartment.

10 What possible relevance does it have whether Mr. Boutureira  
11 had a mistress at the East Side apartment? Can't you  
12 see why the defense in this case introduces a fact like  
13 that? Mr. Boutureira is an admitted seller of nar-  
14 cotics. He is going to go to jail -- he is liable and  
15 exposed to go to jail upwards of 10 years on his own plea  
16 of guilty. The government doesn't claim that Mr. Boutureira  
17 is some paragon of virtue. He is a dealer in narcotics,  
18 and he has been caught and he has pleaded guilty, and Judge  
19 Wyatt has the power to put him in jail. That is what the  
20 criminal justice system is about. But what possible  
21 relevance does it have to this case whether Mr. Boutureira  
22 has a mistress in some apartment on the East Side? It  
23 has no relevance in this case, and I submit that you can  
24 figure out why it was introduced. It was introduced  
25 because when you don't have a defense to a crime you

1 kp4

2 introduce irrelevancies, you introduce nonsense, you in-  
3 troduce prejudicial facts that have absolutely nothing to  
4 do with the case.

5 So Boutureira takes the \$24,000 and he divides  
6 it into four envelopes, \$6000 apiece, and he meets with  
7 the detectives. He meets with them in his car and he hands  
8 Novoa \$6000, Daly \$6000 and Aguiluz \$6000, and he retains  
9 \$6000 for himself, and that covers the second kilo of  
10 heroin and the third kilo of heroin, and he is told by  
11 the detectives not to do anything else for a while because  
12 they are going on vacation. They went on vacation June  
13 22, 1970. So this transaction took place some time  
14 shortly before June 22, 1970.

15 However, while they are away, Ramos introduces  
16 him to a third buyer, a fellow by the name of Cancio,  
17 and Cancio buys the remaining 2 kilos of cocaine during  
18 this period of time for \$18,000, over several trans-  
19 actions. I won't go through the details of that because  
20 they are really irrelevant to the defendants in this case --  
21 just exactly how that transaction took place. But the end  
22 result of it is that they received approximately \$18,000  
23 over several transactions from Cancio for the 2 kilos of  
24 cocaine.

25 And when Novoa and Aguiluz return from vacation,



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2       which would be some time around July 6, July 7, July 8, 1970,  
3       he meets with them -- Daly has not yet returned from  
4       vacation -- and he gives them a proportionate share --  
5       \$4500 for Novoa, for the 2 kilos of cocaine; \$4500 for  
6       Aguiluz. They take Daly's \$4500 and Boutureira keeps  
7       his \$4500.

8               Now just so that we are clear on exactly how  
9       this took place, Novoa, Aguiluz and Daly kept a total of  
10      3 kilograms of heroin and 3 kilograms of cocaine, and  
11      through Boutureira, as the man they dealt with and Pamos,  
12      the man that Boutureira dealt with, they sold 2 kilos of  
13      heroin to Jimmy the Greek -- one to a man on the motorcycle;  
14      the second in the subway locker.

15             They sold 1 kilogram to Nieves, and that was  
16      the one left in the car, and 2 kilos of cocaine to Cancio,  
17      the total price being approximately \$54,000.

18             Now in addition to these sales of heroin and  
19      cocaine for which Novoa received approximately \$13,000 in  
20      May, June and July of 1970, some time in April, 1970,

21      • Novoa and Daly go to the apartment of a female, Yolando  
22      Sarmiento, and take \$5000 from that apartment, and they  
23      split it with Aguiluz. This defendant Novoa, and his  
24      partners, Aguiluz and Daly, ladies and gentlemen of the  
25      jury, not only sold heroin and cocaine, they not only stole

1 kp9

2 it -- all it means is an agreement between two people to  
3 violate the law and then one act to effectuate the agree-  
4 ment, so when Daly, Aguiluz and Novoa sat down in the  
5 Club Espana and decided they were going to sell the nar-  
6 cotics, and when they surveilled that first meeting, that  
7 would be one of the acts effectuating that agreement --  
8 then they committed and completed the crime of conspiracy.

9 The remaining counts of the indictment are  
10 called substantive counts.

11 Count 5 charges Novoa with retaining the 5 kilos  
12 of heroin and cocaine along with Daly and Aguiluz.

13 Count 6 charges the 1-kilo sale to Papadakis,  
14 involving the man on the motorcycle.

15 Count 7 charges the 1-kilo sale to Papadakis  
16 involving the subway locker.

17 Count 8 charges the 1-kilosale to Nieves, and  
18 counts 9 and 10 charge the cocaine sale to Lorenzo Cancio.

19 Now as to those the government must prove, as  
20 his Honor will charge you, that the defendant received,  
21 concealed, bought, sold or facilitated the receipt, the  
22 concealment or sale of narcotics.

23 As for Nieves and Papadakis, the government meets  
24 its burden of showing that they in fact bought it.

25 As for Novoa, the government meets its burden by



1  
2 THE COURT: I agree. I do not know myself, but  
3 the jury will understand that.

4 MR. COSTELLO: Thank you, your Honor.

5 THE COURT: He runs the risk, certainly there is  
6 a possibility, there is no question of that.

7 MR. SCHWARTZ: Your Honor, could we approach  
8 the side bar?

9 THE COURT: No. I think we had better go ahead,  
10 Mr. Schwartz.

11 MR. SCHWARTZ: Can I reserve then?

12 THE COURT: Of course.

13 MR. SCHWARTZ: Thank you.

14 MR. GIULIANI: On the eve of their being sen-  
15 tenced by Judge Wyatt, are they going to come into this court  
16 and do the insane act of committing perjury?

17 Now, they were involved in moving, in selling,  
18 in passing on heroin and cocaine. You do not make a profit  
19 by doing it by yourself. You do it with other people.  
20 There isn't any question in anybody's mind that if they in  
21 fact had 5 kilos of heroin and cocaine, why would they say  
22 it if they didn't have it? They had to sell it to someone.  
23 They had to buy it from someone. That means there were  
24 other people when they came in there and cooperated, and  
25 they testified.

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I am going to ask you ladies and gentlemen to just analyze with me for a moment what a criminal conspiracy, what an agreement to commit a crime, here to sell and to buy massive amounts of heroin and cocaine, is all about. These agreements are concluded among people and they keep it among themselves. They don't announce it to the whole world and the only way to dig out evidence of this to break up these conspiracies to sell massive amounts of narcotics is to first catch somebody in the middle to pull them out. Here on February 14th, 1970 Aguiluz was arrested for perjury and he revealed a series of crimes committed with Novoa and others involving drugs, bribery, et cetera.

Now, what should the government have done when Aguiluz revealed these crimes? Should it have said, "No, Carl Aguiluz, we are not going to listen to you. You see you were involved in those crimes so we can't believe you. We are just going to tear up that information you gave us and we are just going to forget about it."

I submit that that is absurd. The government did what the government was supposed to do. It took that information and then it went out and did its job. It investigated, looked for other witnesses, went and dug out other witnesses to corroborate, went and dug out records of expenses, records of the Taft Hotel, witnesses



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2 who were involved in what lawyers call prior similar acts  
3 that corroborated Aguiluz up and down, backwards and for-  
4 wards on each major point, so that nbody is ever going to  
5 forget that he sold narcotics with Joseph Novoa and that  
6 he sold out money with Joseph Novoa and that he sold out  
7 cases with Joseph Novoa and others, but the one you are con-  
8 cerned with today is Joseph Novoa.

9 Now, the defense talks about a deal with the  
10 government. First of all, let's try to clear that up.  
11 No witness in this case has been granted immunity. Every  
12 single accomplice witness in this case either has pleaded  
13 guilty or has admitted his involvement under oath and will  
14 plead guilty. No one has been granted immunity. They are  
15 exposed to jail terms of from five, some of them, upwards  
16 to 15 years as to others. All of them will be sentenced,  
17 some of them in the next few days.

18 MR. COSTELLO: Objection, your Honor. He is doing  
19 again what your Honor told him not to do before when you said  
20 that you didn't --

21 THE COURT: He has not attempted to predict the  
22 sentence.

23 MR. COSTELLO: He is talkint about five to  
24 fifteen.

25 MR. GIULIANI: I said "exposed."

2 better than that.

3 MR. STONE: Objection.

4 MR. SCHWARTZ: Objection.

5 THE COURT: Overruled.

6 MR. GIULIANI: You are men and women of common  
7 sense. You decide where that money came from.

8 Ladies and gentlemen of the jury, if I have  
9 talked too long I apologize to you. If I have done so  
10 I have done so out of zeal for my client, the government  
11 and the public. The government has confidence that you  
12 men and women will not let Novoa, Papadakis and  
13 Rieves get away with these crimes and walk away with our  
14 responsibility for making possible the distribution of this  
15 massive amount of heroin and cocaine. The government really  
16 has but one hesitation in this case.

17 The proof, the government submits, is overwhelming.  
18 There is no question about the fact that these three men  
19 distributed heroin and cocaine. The only hesitation the  
20 government has remaining is that one or two of you may find  
21 it difficult, no matter how overwhelming the proof is, to  
22 convict a man of a crime. There has been a blatant  
23 appeal for sympathy in this case. We have all seen it.  
24 But, ladies and gentlemen of the jury, it is never a  
25 pleasant duty to convict a man of a crime, any man. It isn't



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A substantive count charges a violation of a law which condemns specific conduct as illegal; for example, in this case illegal transactions in heroin and cocaine.

A conspiracy count, on the other hand, charges an agreement between two or more persons to violate a substantive law or substantive laws. If there was such an agreement, whether or not the conspirators succeed in their objective and actually violate a substantive law is immaterial. The gist of the crime of conspiracy is the illegal agreement itself.

You may in your deliberations consider the separate counts in any order you see fit, but I believe it will be more helpful to you if I explained the six substantive counts first.

Now, Counts 5 through 10 charge the same kind of substantive offense, namely, an unlawful transaction in narcotic drugs.

Count 5 reads as follows:

"The grand jury further charges:

"On or about April 15, 1970 in the Southern District of New York Peter Daly and Joseph Novoa, the defendants, unlawfully, wilfully and knowingly did receive, conceal, buy and sell and facilitate the transportation, concealment, purchase and sale of narcotic drugs, to wit,

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